he held a temporary occupation licence or the cost of building the premises was shared by them. There was no evidence that there was any purported transfer of the temporary occupation licence. The utmost that could be said was that Yap Kim Kee allowed the plaintiff to own half the premises. No question as to the validity of the so-called transfer ever arose so that there was no question of the plaintiff's claim being not maintainable by reason of any transfer.

It is common ground that the land on which the premises stand was at all material times State land. The licence to Yap Kim Kee was issued under rule 40 of the Land Rules, 1930. Rule 41 of the same Rules says that no licence for the temporary occupation of State land shall be transferable. This means that on a contract for the sale and purchase of a house built upon a piece of land in respect of which a temporary occupation licence has been issued, the purchaser cannot claim specific performance or sue for damages for a breach of the contract. It was so held by Thomson J. (as he then was) in the case of *Hee Cheng* v. *Krishnan.*[1]

It is to be observed, however, that rule 41 of the Land Rules prohibits the transfer of a temporary occupation licence. It does not prohibit any dealings which do not amount to a transfer. Thus, if the holder of a temporary occupation licence builds a house on State land and lets it out on rent, such letting does not amount to a transfer of the licence (*per* Ismail Khan J. in *Govindaraju* v. *Krishnan* [2]). In such a case there would clearly be the relationship of landlord and tenant as between the holder of the licence and the person to whom the house is rented. If the temporary occupation licence is subsequently cancelled, this relationship does not cease to exist because the tenant cannot then plead the Ruler's superior title unless he can show a better right to possession in himself which he can do only if he has had a temporary occupation licence issued to him (see *Senik* v. *Hassan & Anor.*[3]). Similarly, if a person builds a house on State land without obtaining a temporary occupation licence and lets it out, his tenant is estopped from denying his title unless he (his tenant) can set up a better title in himself.

Taking the present case at its worst, the plaintiff put up the premises in question on State land obviously with the permission of the then holder of the temporary occupation licence in respect of the land. He allowed the defendant to go into occupation as a monthly tenant. The defendant paid rent regularly for six years. He has expressly admitted that he was the plaintiff's tenant. The only reason why he stopped paying rent was that a summons had been issued against him for unlawful occupation of State land, but that summons was withdrawn. Where a tenant has been paying rent for so many years, he is estopped under section 116 of the Evidence Ordinance, 1950 from denying the title of his landlord, and when a tenant is estopped from denying a title, no title need be shown at all. The most ordinary instance of estoppel is the well-established rule that a tenant, during his possession of premises, shall not deny that the landlord, under whom he had entered and to whom he has paid rent, had title at the time of his admission. Thus, whether the landlord brings ejectment, or an action for rent or for use and occupation against his tenant, the defendant can neither set up the superior title of a third person, nor show that the landlord has no title. The fact that the plaintiff had no temporary occupation licence at the beginnig of the tenancy or at any time subsequently, therefore, was no bar to this action. The learned magistrate was therefore quite right in entering judgment in his favour. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Athi Nahappan & Co.; T. Selvarasan.*

YEE BOON HENG v. TAN CHWEE

[O.C.J. (Raja Azlan Shah J.) May 22, 1967]

[Raub — Civil Suit No. 42 of 1965]

Negligence — Failure to take reasonable precaution — Contributory negligence.

Damages — Hip bone — Dislocation — Pelvic bone — Fracture.

Damages — Running-down action — Interest on damages — Civil Law Ordinance, 1956, s. 11.

In this running-down case the court found that the defendant was negligent in two respects: (1) failing to keep a proper look-out in attempting to negotiate the bend; (2) being suddenly deprived of proper control of his vehicle by some defect suddenly manifesting itself in the vehicle, resulting in the collision. The plaintiff was found to have contributed to his own injury to the extent of 25%.

The plaintiff sustained a dislocation of the hip joint and this dislocation was complicated by a fracture of the pelvic bone which forms part of the hip joint. An open reduction was undertaken, that is, the wound was opened by cutting through the muscles and setting the bone. The fractured fragments had to be screwed to the pelvic bone in order to hold the dislocated bone in position. The plaintiff was hospitalised for 2 months and 12 days. The Orthopaedic Surgeon examined him again on the morning of the trial and stated that his post-operative recovery was normal and satisfactory and that he had been fortunate to recover the use of his hip. He estimated the extent of disablement to be about 20 per cent. As to the period of time during which a person with such injuries would be unable to work, he stated that this depended on response to treatment of the individual concerned, but 4 to 5 months could be taken as the average period. This would be followed by about 2 months of light work. He further stated that osteo-arthritis could be expected to develop at the site of the injuries in about 4 or 5 years' time and could affect his working capacity. It was in evidence that the plaintiff was earning an average of $300 per month at

the time of the accident.

Held: in view of the dislocation which was complicated by the fracture and which in turn necessitated an open reduction and the probability that osteo-arthiritis would set in in later years, a sum of $6,000 should be awarded as general damages. As to loss of earnings a sum of $1,500 should be allowed at the rate of $300 per month for 5 months.

Observations on whether interest should be awarded on damages in respect of personal injuries caused in a motor accident.

Cases referred to:—

(1) *The Mimosa* (1944), 77 Ll.L.R. 217; [1944] W.N.74.

(2) *Grayson* v. *Ellerman Lines Ltd.* [1920] A.C. 466 at p. 477.

(3) *Nance* v. *British Columbia Electric Co.* [1951] A.C. 601 at p. 611.

(4) *Ghulam Hussain* v. *Shaharom & Anor.* [1966] 2 M.L.J. 207.

(5) *Sivarajan* v. *Swee Lam Estates (M) Ltd.* [1966] 1 M.L.J. xvii.

(6) *Ban Pet Hock* v. *Ong Ah Ho* [1966] 2 M.L.J. 256.

CIVIL SUIT.

Richard Ho for the plaintiff.

Richard Talalla for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is yet another running-down case. On 24th October 1964 the plaintiff was driving a lorry, and about 15 miles from Triang on the way to Temerloh there was a collision between his lorry and an on-coming lorry driven by the defendant. He sustained a dislocation of the hip bone together with a fracture of the pelvic bone which forms part of the hip joint. By a writ dated 9th November 1965 he brought an action claiming that his injury resulted from the negligence of the defendant. In his pleadings the defendant denied negligence. There was no allegation in the defence of negligence against the plaintiff. In my view, it is immaterial that the defendant did not allege negligence against the plaintiff as long as the court, after having reviewed all the facts, finds that such negligence exists. Section 12 of the Civil Law Ordinance, 1956, provides for apportionment of liability in cases of contributory negligence. (See *The Mimosa* (1)). Be that as it may, the court gave leave for the inclusion of this plea in the course of the proceedings.

The accident occurred at a bend in the road between Temerloh and Triang. Vehicles approaching from opposite directions are obscured from one another by a line of bushy trees until they are in close proximity to the bend. The road is 11′ 6″ wide, and several guide posts on either side of it at the point of impact limit the use of the side-tables to the very minimum. The width of each of the lorries in question was 7′ 6″, so that a reasonable and prudent driver would approach this blind bend at such a speed as would enable him to stop, if necessary, before reaching the bend. To fail to do this would be tantamount to a failure to take reasonable precautions to avoid a collision. That would constitute negligence.

An examination of the scene of the accident revealed two important facts. The first was that the off-side tyres of the defendant's lorry had left a brake mark measuring 57′ 8″ on the plaintiff's half of the road. The other fact was that the off-side front mudguards of both vehicles were damaged.

The plaintiff's story is that at the time of the accident he was conveying four timber logs from Triang to Kuala Lumpur at a speed of 10 to 20 miles per hour. He said that when he was within a hundred feet of the bend he saw an on-coming lorry between 220 and 230 feet from the bend. The said lorry was fully loaded with 48 bags of rice. He reduced his speed and observed that the other lorry did likewise, and he heard the screech of brakes being applied. However, that vehicle failed to stop and a collision occurred at the bend. At the time of impact the plaintiff's vehicle was about to stop. His attendant gave evidence to the effect that immediately before the accident the other lorry was travelling in the middle of the road, and that is sufficiently substantiated by the evidence of the brake marks on the road. If the plaintiff's version is to be believed, I have no hesitation to conclude that the defendant was comparatively further away from the bend and that as an ordinary prudent driver he should have allowed the plaintiff's vehicle to negotiate the bend first.

The defendant contended that both his vehicle and that of the plaintiff were at equal distances from the bend — about 220 feet. He said both vehicles were travelling at a speed of about 30 miles per hour. On sighting the plaintiff's lorry he sounded his horn and applied his brakes in order to stop his lorry. He said the plaintiff's lorry did not slow down. Then the collision occurred. In cross-examination he told a different story, and I reproduce that part of his evidence:—

> "I sounded my horn in order to let the other driver know that I was crossing the culvert. I was then about 25 ft. from culvert. I did not sound my horn earlier as I could not see the on coming vehicle yet. I wanted to cross the culvert first. That was why I sounded my horn.
>
> When I applied my brakes I had already seen the on-coming lorry. When I came to about 25 ft. from culvert, and as I had intended to cross it first, I sounded my horn to draw the other driver's attention. I was hoping that the other lorry would do something to let me through".

If that is the probable version of what happened, the facts do not justify the conclusion. The silent evidence of the brake marks on the road leading up to the point of impact tells a very

different story. The brake marks measuring 57' 8" indicate that they were applied when the defendant's lorry was at about that distance from the bend, without taking into account the distance travelled by him while making up his mind to apply his brakes. That is sufficient to discredit the defendant's story. Another improbability in his evidence is that he could not have seen the timber lorry at a distance of 440 ft. in view of the bushy trees that lined the left hand side of his road and the blind bend.

In the present case it is not unnatural to expect one party to blame the other for the accident, and in such circumstance their evidence requires very careful scrutiny.

The probabilities favour the inference that the defendant failed to see the on-coming timber lorry when he was approaching the bend. He then applied his brakes but the lorry failed to stop as his brakes were not fully effective. That caused him to sound his horn to attract the other driver's attention in the hope that the latter might do something to let him negotiate the bend first. The plaintiff, thinking he had the right of way by reason of being nearer the bend, proceeded to negotiate it. Then the collision occurred. He did not apply his brakes abruptly through fear that the logs behind him would maintain their forward momentum and crush him.

In my judgment the defendant was negligent in two respects: (1) failing to keep a proper look-out in attempting to negotiate the bend; (2) being suddenly deprived of proper control of his vehicle by some defect suddenly manifesting itself in the vehicle, resulting in the collision.

It was then said by Mr. Talalla on behalf of the defendant that the plaintiff contributed to his own injury. This part of the law is no longer in doubt. When it is said that the plaintiff is guilty of contributory negligence, all that is meant is that he has failed to take reasonable precaution for his own safety; whether at the same time he has also been careless regarding the safety of others is an immaterial consideration, though such a duty will normally be owed in most cases of highway collision. (See *Grayson* v. *Ellerman Lines Ltd.*;[2] *Nance* v. *British Columbia Electric Co.*[3]).

In my judgment the plaintiff in the circumstances of this case should have driven his lorry at a speed which would have enabled him to stop it before the bend and thus avoid the accident. In a way he has contributed to his own injury, and I assess his liability at 25 per cent.

The plaintiff sustained a dislocation of the hip joint and this dislocation was complicated by a fracture of the pelvic bone which forms part of the hip joint. An open reduction was undertaken, that is, the wound was opened by cutting through the muscles and setting the bone. The fractured fragments had to be screwed to the pelvic bone in order to hold the dislocated bone in position. The plaintiff was hospitalised for 2 months and 12 days. The Orthopaedic Surgeon examined him again on the morning of the trial and stated that his post-operative recovery was normal and satisfactory and that he had been fortunate to recover the use of his hip. He estimated the extent of disablement to be about 20 per cent. As to the period of time during which a person with such injuries would be unable to work, he stated that this depended on response to treatment of the individual concerned, but 4 to 5 months could be taken as the average period. This would be followed by about 2 months of light work. He further stated that osteo-arthritis could be expected to develop at the site of the injuries in about 4 or 5 years' time and could affect his working capacity.

In view of the dislocation which was complicated by the fracture and which in turn necessitated an open reduction and the probability that osteo-arthritis would set in in later years, I assess a sum of $6,000 under this head. It was contended that had the plaintiff received immediate medical attention after the accident he would not have suffered the present injuries which necessitated an open reduction. In my view, if the plaintiff had received immediate medical attention the hip could have been reduced by close reduction, but not the fracture. Open surgery was necessary to fix the fracture by screwing the bone fragments. I do not think the contention affects the quantum of damages. If it does, it is minimal.

With regard to the claim for loss of prospective earnings, the award must be nominal. At the time of the accident the plaintiff earned an average monthly income of $300. At the present moment he is earning between $260 and $270 per month. Therefore the differences of loss of possible earnings is in the region of $30 per month which, to my mind, is nominal, and considering the hazardous nature of work of the defendant at the time of the accident it cannot reasonably be said that he could have earned a fixed sum of $300 per month. In the circumstances I would allow a sum of $500 for loss of prospective earnings.

In respect of special damages it is reasonable to award a sum of $100 for transport expenses. As to loss of earnings, I would allow a sum of $1,500 at the rate of $300 a month for 5 months. Therefore, special damages would total $1,600.

I now come to the controversial question whether interest should be awarded on damages in respect of personal injury caused in a motor accident. Section 11 of the Civil Law Ordinance, 1956, which is the same as section 8 of

the Singapore Civil Law Ordinance (Cap. 24), is in *pari materia* with section 3 of the (U.K.) Law Reform (Miscellaneous Provisions) Act, 1934. It is common ground that the section gives the court a discretion in the matter.

Mr. Richard Ho on behalf of the plaintiff argued that this court should award the plaintiff interest on damages from the date of the accident to the date of judgment, basing his claim on two local authorities of *Ghulam Hussain* v. *Shaharom & Anor.*[3] and *Sivarajan* v. *Swee Lam Estates (M) Ltd.*[4] In the former case the trial judge awarded interest at 6 per cent. on the full damages. It would appear the question of interest was not argued. In the latter, the case took some 23 months to be heard, and Azmi J. (as he then was) awarded interest on damages from date of issue of writ to date of payment under O. 40 r. 11 on the "iniquity of keeping the plaintiff out of the use of moneys legitimately due to him for an unconscionably long time". If it is now said that these two authorities above set at rest the principles to be applied in all similar cases, I am not prepared to bind myself to that argument. Paraphrasing it, if it is contended that a successful plaintiff in a non-fatal motor accident case is entitled to interest on damages as of right, I venture to say that the argument is ill-founded. The discretion which the court has under that section seems to me to be as unfettered as any discretion can be, and I think it would be a misfortune if an exercise of discretion on particular facts should be used to impose fetters on all subsequent use of the discretion in other cases.

On the other hand, Mr. Talalla relied on the practice in vogue in Singapore and in the United Kingdom that the courts have so far refused to make such award. If it is also said that this court is bound to follow the practice in the two dominions, again I must disassociate myself from that proposition. I would reiterate my view that a discretion is a discretion and it is desirable that it should remain so.

The popular reason advanced for the proposition that interest should be paid is that the plaintiff is in a worse position by withholding money which is legitimately due to him. It is contended that in practically every case when a writ is filed against a defendant he should have admitted the claim and have paid the appropriate sum for damages, and failure to do that would entitle the plaintiff to interest. In my view, that is a simplification of the matter. The criterion in all contested running-down cases is the question of liability and the assessment of damages. It is unlike the case for recovery of a debt where the amount owing is ascertainable. I am in full accord with the view taken by the trial judge in *Ban Pet Hock* v. *Ong Ah Ho.*[5] In that case a passage from page 275 of the 12th edition of *Mayne & McGregor* on Damages was relied by the trial judge for the proposition that "torts affecting the person are in the nature of things not likely to require the award of interest in the damages". The reason behind the doctrine is that in tort the plaintiff has been deprived of a capital asset upon which he could earn interest. That passage was also relied by the author of an article appearing in [1966] 1 M.L.J. xxxi. In the absence of any persuasive argument to the contrary, I take the view that in running-down actions it is not normal for the court to award interest on damages. This is subject to the following observations:

(1) In cases where damages awarded are for non-pecuniary loss, e.g. for pain and suffering and loss of amenities in personal injury cases, interest on damages are to be disallowed because they do not constitute capital asset.

(2) Insofar as pecuniary loss is concerned, where the loss is in respect of prospective earnings no interest should be awarded since at the time of the action such loss has not accrued. In such a case the invariable practice is to award a sum calculated by reference to estimated loss in the future as from date of judgment.

(3) In cases of pecuniary loss which has accrued on the date of judgment, e.g. wages and salaries, medical expenses, transport expenses and loss or damage to chattels, interest should be awarded in respect of the period during which he has been deprived of these sums or chattels. In normal cases the amount of interest on such damages are likely to be too small to warrant the award. It is here that the court will have to exercise its discretion accordingly.

(4) The principle will not necessarily apply in cases where money has been paid into court.

There will therefore be general damages in the sum of $6,500 and special damages in the sum of $1,600. In view of the contributory negligence of the plaintiff assessed at 25 per cent., the amount of damages due to him is to be apportioned accordingly.

Insofar as interest is concerned, the amount which I would have awarded on the special damages with effect from the date of issue of the writ to the date of judgment, a period of some 20 months, which in the circumstances is reasonable in this particular case, is so negligible as not to justify an award.

The plaintiff will get his full costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; Richard Talalla & Co.*